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No. 94-584

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IN THE

Supreme Court of the United States

October Term, 1994

ROBERT L. SCHULZ, JOHN SALVADOR, JR., GILBERT O. BOEHM, CHARLES D. BURGE, PHD., LELAND D. RYAN, SUZAN DIANE LA DUE, DOUGLAS FREDERICK WATSON, RICHARD ALLEN BERRY, JOHN B. SIBLEY, JR., CLAUDE F. SPROWLS, GARY L. WILLIAMS, ANDREA VECCHIO, STEPHEN LANDES, ERICK FRENKE, TAI AGUIRRE, EDWARD THOMAS, NICHOLAS J. SELVAGGIO, GAETANO V. CRUCIANI and EMANUEL A. CATANUTO,

Petitioners,

against

THE STATE OF NEW YORK, MARIO M. CUOMO, GOVERNOR; THE NEW YORK STATE LEGISLATURE, RALPH MARINO, SENATE PRESIDENT *PRO-TEM*; SAUL WEPRIN, SPEAKER OF THE ASSEMBLY; THE OFFICE OF THE STATE COMPTROLLER, H. CARL MC CALL, COMPTROLLER; THE OFFICE OF THE DIVISION OF THE BUDGET, PATRICK J. BULGARO, DIRECTOR; THE METROPOLITAN TRANSPORTATION AUTHORITY, ROBERT R. KILEY, CHAIRMAN; AND THE NEW YORK STATE THRUWAY AUTHORITY, PETER TUFO, CHAIRMAN,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF OF RESPONDENTS IN OPPOSITION

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(4638 – 1994)

Question Presented

Whether there is a federal question presented by a case in which the State's highest court unmistakably has ruled that the purported property interest upon which petitioners base their due process argument does not exist under state law.

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No. 94-5845

In the
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

ROBERT L. SCHULZ, JOHN SALVADOR, JR., GILBERT O. BOEHM, CHARLES D. BURGE, PHD., LELAND D. RYAN, SUZAN DIANE LA DUE, DOUGLAS FREDERICK WATSON, RICHARD ALLEN BERRY, JOHN B. SIBLEY, JR., CLAUDE F. SPROWLS, GARY L. WILLIAMS, ANDREA VECCHIO, STEPHEN LANDES, ERICK FRENKE, TAI AGUIRRE, EDWARD THOMAS, NICHOLAS J. SELVAGGIO, GAETANO V. CRUCIANI and EMANUEL A. CATANUTO,

Petitioners,

-against-

THE STATE OF NEW YORK, MARIO M. CUOMO, GOVERNOR; THE NEW YORK STATE LEGISLATURE, RALPH MARINO, SENATE PRESIDENT PRO-TEM, SAUL WEPRIN, SPEAKER OF THE ASSEMBLY; THE OFFICE OF THE STATE COMPTROLLER, H. CARL MC CALL, COMPTROLLER; THE OFFICE OF THE DIVISION OF THE BUDGET, PATRICK J. BULGARO, DIRECTOR; THE METROPOLITAN TRANSPORTATION AUTHORITY, ROBERT R. KILEY, CHAIRMAN; AND THE NEW YORK STATE THRUWAY AUTHORITY, PETER TUFO, CHAIRMAN,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF OF RESPONDENTS IN OPPOSITION

Statement of the Case

Plaintiffs, all registered voters in the State of New York, commenced a *pro se* action by service of a summons and verified complaint/petition on May 24, 1993, seeking a judgment declaring, *inter alia*, that a New York statute, chapter 56 of the Laws of 1993 (hereinafter "the Act"), violated various provisions of the New York State Constitution by (1) authorizing the issuance of long-term, tax-supported State debt without voter approval (NY CONST art VI, § 11), (2) authorizing a gift or loan of the State's credit (NY CONST art VI, § 8), and (3) assuming the liability of a public corporation (NY CONST art X, § 5). On June 30, 1994, the New York State Court of Appeals held that the obligations authorized by the Act, which expressly are not the obligations of the State, but instead are the special obligations of the issuing independent public authorities which will be repaid by the issuer solely from funds the State may, but is not obligated to, appropriate each year, are not "debt" of the State. Accordingly, as stated by the court:

> Because the State does not become indebted, the financing subject to appropriation does not constitute the lending of credit or assumption of liability of a public corporation, or indebtedness of the State for purposes of the constitutional limits on such debt. Instead, the funds -- if appropriated -- constitute a permissible gift of money to a public corporation out of existing revenues, creating no debt.

Schulz v State of New York, 84 NY2d 231, 250-51, 639 NE2d 1140, 1150, 616 NYS2d 343, 353 (1994); Petitioners' Appendix, at A-19 (citations omitted).

This brief in opposition to the petition for a writ of certiorari is submitted on behalf of all respondents: the State of New York, the Governor, the State Legislature, the President of the Senate, the Speaker of the Assembly, the State Comptroller, the Division of the Budget, and the Budget Director (hereinafter "State Respondents"), respondents New York State Thruway Authority, Peter Tufo, Chairman, and respondents Metropolitan Transportation Authority, Peter E. Stangl, Chairman.

REASONS FOR DENYING THE WRIT

As this Court has held, anything short of a legitimate claim of entitlement precludes a finding that state law has created a liberty or property interest triggering due process safeguards. *See, Board of Regents v Roth*, 408 US 564, 577 (1972). It also is axiomatic that this Court's jurisdiction fails where the judgment of a state court rests upon an independent non-federal ground which is adequate to support the judgment. *See, Fox Film Corp. v Muller,* 296 US 207, 210 (1935). Thus, where recognition of the property interest underlying a due process claim is based upon an interpretation of state law which has been authoritatively rejected by the State's highest court, this Court is without jurisdiction to grant the writ.

Here, petitioners' due process argument is dependent upon their argument that the New York State Constitution creates a property interest by subjecting the contracting of debt by the State to a public referendum and that this property interest was taken away, without due process of law, by way of the challenged legislation. As noted above, however, the State's highest court has rejected petitioners' arguments, ruling that the challenged legislation does not authorize debt of the State, but instead authorizes only the issuance of debt by an independent

public authority. Thus, there is no action authorized which would be subject to the state constitution's public referendum requirement, nor is there any lending of credit or assumption of liability of a public corporation. These rulings on state law constitute independent non-federal grounds which are adequate to support the judgment of the State's highest court and preclude this Court's consideration of the federal questions raised by petitioners.

CONCLUSION

THE WRIT SHOULD BE DENIED.

Dated: Albany, New York
December 22, 1994

Respectfully submitted,

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